

**Final Order Denying Refund: 03-20191508R; 03-20191509R
Withholding Tax
For the Year 2010 and 2012**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Indiana Individuals, as owners of an Indiana business, were not entitled to a refund of withholding tax withheld on behalf of their business's employees because the requests were untimely.

ISSUE

I. Withholding Tax - Refund Request.

Authority: IC § 6-8.1-9-1; [45 IAC 15-9-2](#)(d); General Tax Information Bulletin 100 (December 2019).

Taxpayers argue that they are entitled to a refund of withholding tax paid to the Indiana Department of Revenue.

STATEMENT OF FACTS

Taxpayers are two Indiana residents who own and operate an insurance agency. Taxpayers filed multiple refund requests each of which was in the form of a GA-110L. Each GA-110L requested the return of withholding tax. In effect, Taxpayers, as individuals, were acting on behalf of their insurance agency which had originally filed for and paid the tax on behalf of the agency's employees.

The Indiana Department of Revenue ("Department") reviewed the two requests and - in the case of these two - denied the refunds.

The Department sent Taxpayers two denial letters each of which explained the reason for the denial. Each letter states, "The claim for refund was not filed within the time period required by law."

Taxpayers protested the Department's decision denying the refunds and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayers explained the basis for the protest.

I. Withholding Tax - Refund Request.

DISCUSSION

The issue is whether Taxpayers - on behalf of their insurance agency business - have established that they are entitled to a refund of withholding tax withheld by the insurance agency on behalf of the agency's employees.

Taxpayers state that the Department overcharged withholding tax. Taxpayers explain that that they originally failed to file and pay withholding tax and, in the absence of the returns, the Department assessed tax based on the "best information available." Taxpayers state that they paid the assessed amounts only later realizing that the amounts overstated the amounts actually due.

In response to the Department's denial, Taxpayers state that they contacted the Department both by phone and in writing before filing the original GA-110Ls. To that end, Taxpayers provided a copy of a letter dated April 2016 asking that the Department "please adjust the estimated amount to the amount that should be due and refund us the difference." In another undated letter, Taxpayers state that they requested the refunds on three previous occasions and that "[a]ll of this documentation had been submitted more than once."

The Department denied the two refunds on the ground that the GA-110L requests were untimely. However, Taxpayers argue that the *earlier* requests were submitted within the three-year statute of limitations. As to the

GA-110Ls, the returns were plainly untimely. IC § 6-8.1-9-1(a) provides as follows:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the person may file a claim for a refund with the department. Except as provided in subsections (j) and (k), in order to obtain the refund, the person must file the claim with the department within three (3) years after the later of the following:

- (1) The due date of the return.
- (2) The date of payment.

In this case, there is no question that the GA-110Ls, dated July 2019, were not filed within the prescribed three-year window. The refund requests were not filed within three years of the date the withholding returns were filed or the date the withholding payments were made.

However, Taxpayers explain that they are entitled to rely on the earlier correspondence with the Department which - according to Taxpayers - represented timely refund requests. On this question, the Department is unable to agree that the previous correspondence provides the information necessary for the Department to consider the request. General Tax Information Bulletin 100 (December 2019) (*formerly* Commissioner's Directive 13 (October 2015)), provides:

The department's claim for refund form is Form GA-100L. The claim for refund must be filed using Form GA-110L. Alternatively, a refund may be claimed using an amended income tax return or a withholding tax return (Form WH-3) that indicates an overpayment of those respective taxes.

Further, [45 IAC 15-9-2](#)(d) requires:

When filing a claim for refund with the department the taxpayer's claim shall set forth:

- (1) The amount of the refund claimed;
- (2) A sufficiently detailed explanation of the basis of the claim such that the department may determine its correctness;
- (3) The tax period for which the overpayment is claimed; and
- (4) The year and date the overpayment was made.

The earlier correspondence fails to meet the requirements set out in [45 IAC 16-9-2](#)(d) and IC § 6-8.1-9-1. See also *Medco Health Sols., Inc. v. Indiana Dep't of State Revenue*, 9 N.E.3d 263, 266 (Ind. Tax Ct. 2014)(explaining that "the person must file the claim with the [D]epartment within three (3) years after the latter of . . . [t]he due date of the return [or t]he date of payment. . . . Furthermore, the claim must include certain information such as the amount of the refund to which the person is entitled, the reasons why the person is entitled to the refund, the tax period for which the overpayment is claimed, and the year and date of the overpayment [and] claim for refund generally must be filed on the form prescribed by the Department"). For example, Taxpayers do not clearly explain that they are seeking a refund of withholding tax paid by their insurance agency. Taxpayers did not explain that they - as individuals - were seeking to obtain withholding tax paid by their agency on behalf of the agency's employees. Further, Taxpayers do not explain how and why the inflated withholding payment amounts were not claimed on their employees' own income tax returns. For example, if an insurance agency employee filed his or her own 2010 income tax return reporting a tax liability less than the amount withheld on his or her behalf, that employee would presumably have received a refund of any excess withholding amount. Taxpayers explain that their employees never received refunds representing an amount in excess of what those employees owed. However, Taxpayers provided nothing which would have substantiated that assertion.

Even, for the sake of argument, if the Department were to ignore the requirement that refunds be timely submitted on the form and in the manner required by the Department, Taxpayers failed to substantiate their refund claims as statutorily required.

FINDING

Taxpayers' protest is respectfully denied.

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